REMARKS

Claims 1-9 and 11-15 are pending in the present application. Claims 1-3, 5, and 11-13 have been amended, Claims 16-20 have been added, leaving Claims 1-9 and 11-20 for consideration upon entry of the amendment. Support for the amendment to Claims 1, 2, 11 and 12 can be found in the Examples and on page 6, lines 24-25. Claims 3, 5, and 13 have been amended in order to make the claims consistent in form. No new matter has been introduced by these amendments. Reconsideration and allowance of the claims is respectfully requested in view of the above amendments and the following remarks.

1. Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1-6, 8, 9, 11-13, and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,165,990 to Nakano. Nakano discloses a stampable sheet which can be used in applications such as pallets. The stampable sheet comprises "a styrene polymer having a syndiotactic configuration" and a fibrous reinforcing material (Col. 2, lines 16-21). The stampable sheet may further comprise "a polymer having a polar group which contains polyphenylene ether or polyphenylene ether and a styrene component" (Col. 3, lines 58-61). Other thermoplastic resins may also be blended (Col. 9, line 26 thru Col. 10, line 16).

In contrast, the instant application is directed to a plastic pallet comprising polyphenylene ether resin or blends containing polyphenylene ether resin and high impact polystyrene, at least one flame retardant, at least one impact modifier, and one or more resins selected from the group consisting of polycarbonate resin, blends containing polycarbonate

resin, vinyl aromatic graft copolymer resin, polyetherimide resin, blends containing polyetherimide resin, and thermosetting resins. The plastic pallet meets or exceeds the Underwriters Laboratory UL 2335 protocol for pallets.

Apparently the Examiner has equated the combination of syndiotactic polystyrene and a polymer having a polar group which contains polyphenylene ether or polyphenylene ether and a styrene component as taught by Nakano with the blends containing polyphenylene ether resin and high impact polystyrene as claimed in the instant application. It is well known in the art that stereochemical structure of syndiotactic polystyrene renders it significantly different from non-syndiotactic polystyrene. The stereochemical arrangement results in syndiotactic polystyrene having substantively different characteristics than non-syndiotactic polystyrene. The differences between the two types of polystyrene are evidenced in the physical properties, one of the most startling of which is the melting point. Syndiotactic polystyrene has a melting point approximately 100°C higher than non-syndiotactic polystyrene. It is well known in the art that high impact polystyrene is non-syndiotactic.

It is clear from the above discussion of syndiotactic polystyrene and high impact polystyrene that they are significantly different materials. As a result of this distinction, the combination of syndiotactic polystyrene and a polymer having a polar group which contains polyphenylene ether, or polyphenylene ether and a styrene component as taught by Nakano is vastly different than the blends containing polyphenylene ether resin and high impact polystyrene as claimed in the instant application.

To anticipate a claim under 35 U.S.C. §102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Barient, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d

1766, 1768 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 1007 (1988). Nakano does not disclose blends containing polyphenylene ether resin and high impact polystyrene as claimed in the instant application and because Nakano does not disclose this element, Nakano cannot provide the basis for a rejection under 35 U.S.C §102(b).

Accordingly, Applicants' earnestly request withdrawal of the rejection and allowance of the claims.

1. Claim Rejections Under 35 U.S.C. § 103(b)

Claims 1-9 and 11-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nakano and further in view of U.S. Patent No. 4,942,206 to White et al., U.S. Patent No. 5,122,575 to White et al., and UK Patent Application 2,043,083. Nakano teaches the inclusion of polyimide in Nakano's disclosed compositions but does not disclose the inclusion of polyetherimide. U.S. Patent Nos. 4,942,206 and U.S. Patent No. 5,122,575 to White et al. have been cited for their teachings of combinations of polyphenylene ether and polyetherimide. The White patents do not discuss polystyrene. UK Patent Application 2,043,083 has been cited for its teaching of phosphate flame retardants in polyphenylene ether compositions which may contain a styrene resin. Neither of the White patents nor UK Patent Application 2,043,083 cure the deficiency of Nakano regarding non-syndiotactic polystyrene as discussed above.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Establishing a prima facie case of obviousness requires that all elements of the

invention be disclosed in the prior art. *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

While the UK Patent Application 2,043,083 does teach flame retardant compositions comprising polyphenylene ether resin, a styrene resin which may be a rubber modified and a phosphate flame retardant there is no motivation to combine the composition of the UK Patent Application with the disclosure of Nakano. Nakano effectively teaches away from the composition of the UK Patent Application by virtue of its emphasis and insistence on syndiotactic polystyrene. Nakano teaches that only syndiotactic polystyrene can be used (Col. 2, lines 27-34) so the rubber modified styrene resin of the UK Patent Application can not be substituted for the syndiotactic polystyrene resin and no combination can be made which is different than the teaching of Nakano itself.

An Examiner cannot establish obviousness by locating references that describe various aspects of a patent applicant's invention without also providing evidence of the motivating force which would have impelled one skilled in the art to do what the patent applicant has done. *Ex parte Levengood*, 28 U.S.P.Q. 1300 (Bd. Pat. App. Int. 1993). The references, when viewed by themselves and not in retrospect, must suggest the invention. *In Re Skoll*, 187 U.S.P.Q. 481 (C.C.P.A. 1975). Because Nakano teaches away from the composition of the UK Patent Application these references cannot be combined to provide the basis for a rejection under 35 U.S.C. §103(a). Applicants respectfully request withdrawal of the rejection of Claims 1-9 and 11-15 and allowance of the claims.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 07-0862 maintained by the Assignee.

Respectfully submitted,

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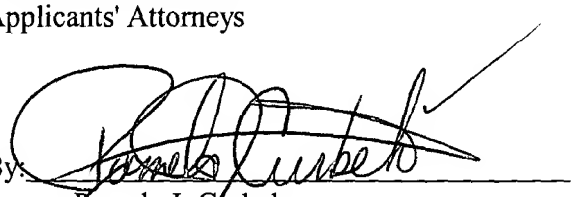
By: 
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A marked up version of claims 1-3, 5 and 11-13 follows:

1. (Thrice Amended) A plastic pallet comprising:

polyphenylene ether resin [and] or a blend[s] containing polyphenylene ether resin and a high impact styrene; and one or more other resins selected from the group consisting of:

polycarbonate resin, [and]

blends containing polycarbonate resin,

vinyl aromatic graft copolymer resin,

polyetherimide resin, [and]

blends containing polyetherimide resin, and

thermosetting resins;

at least one flame retardant;

at least one impact modifier; and

wherein the pallet meets or exceeds Underwriters Laboratory UL 2335 protocol for pallets.

2. (Twice Amended) The plastic pallet of claim 1 wherein [the pallet comprises:

(a) a polyphenylene resin,

(b) a polystyrene resin, and

(c)] said flame retardant comprises an organophosphate.

3. The plastic pallet of claim 2 wherein the pallet comprises:

[(a)] about 30 to about 70 parts of the polyphenylene ether resin,

[(b)] about 20 to about 60 parts of the polystyrene resin, and

[(c)] about 10 to about 30 parts of the organophosphate, wherein all weights are based on 100 parts by weight of [(a), (b),] polyphenylene ether resin, polystyrene resin and [(c)] organophosphate together.

5. The plastic pallet of claim 1 wherein the pallet comprises:

[(a)] a polycarbonate resin,

[(b)] an acrylonitrile-butadiene-styrene resin, and

[(c)] an organophosphate [resin].

11. (Thrice Amended) A method for making a plastic pallet comprising:

molding a composition comprising polyphenylene ether resin [and] or a blend[s] containing polyphenylene ether resin and a high impact polystyrene; at least one flame retardant; at least one impact modifier; and one or more other resins selected from the group consisting of:

polycarbonate resin, [and]

blends containing polycarbonate resin,

vinyl aromatic graft copolymer resin,

polyetherimide resin, [and]

blends containing polyetherimide resin, and

thermosetting resins; and

wherein the pallet meets or exceeds Underwriters Laboratory UL 2335 protocol for pallets.

12. (Twice Amended) The method of claim 11 wherein [the pallet comprises:

(a) a polyphenylene resin,

(b) a polystyrene resin, and

(c)] said flame retardant comprises an organophosphate.

13. The method of claim 11 wherein the pallet comprises:

[(a)] a polycarbonate resin,

[(b)] an acrylonitrile-butadiene-styrene resin, and

[(c)] an organophosphate [resin].